



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,220	01/16/2004	Tatsuya Mitsugi	Q79265	5741

23373 7590 10/27/2008

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 10/27/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/758,220	Applicant(s) MITSUGI ET AL.	
	Examiner BRIAN P. WHIPPLE	Art Unit 2452	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 25 August 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Kenny S Lin/
Primary Examiner, Art Unit 2452

Continuation of 10. Other (including any explanation in support of the above items):

A) While not a reason for non-compliance, the Examiner's art unit has changed from 2152 to 2452. If desired, the Appellant may update the "Group Art Unit" on the cover page of the appeal brief.

B) The "STATUS OF CLAIMS" is intended only for a statement of the status of the claims (i.e., "rejected, and are the subject of this appeal"). Appellant need not include the text related to claims 1-18 being rejected as unpatentable over Blahut, as this is properly included in the Grounds of Rejection section of the brief. The second sentence of the "STATUS OF CLAIMS" section should therefore be removed.

C) The "STATUS OF AMENDMENTS" section need not discuss the response filed, because it was arguments only and did not include any amendments. Therefore, the section should simply indicate that no amendments have been filed subsequent to the final rejection.

D) The "SUMMARY OF THE CLAIMED SUBJECT MATTER" section (page 10, final paragraph) improperly refers to "Claim 7 depends from claim 9" as opposed to the correct "Claim 17 depends from claim 9."

E) The "GROUND OF REJECTION TO BE REVIEWED ON APPEAL" section improperly lists only Blahut in the grounds of rejection relied upon by the Examiner. The section should also indicate that the rejection was "in view of what was well known in the art, support provided by Magendanz et al. (Magendanz), U.S. Patent No. 7,136,042 B2."

F) The "ARGUMENT" section should list each claim (or group of claims argued together) separately by number in a sub-heading (see section (vii) of 37 CFR 41.37 which states "Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number.") Therefore, claims 1-2, 4-14, 16, and 18 should be grouped under a common sub-heading for the first section of the arguments, as they are argued together. Then claim 3 should be included in its own sub-heading, as it is argued separately. And then claims 15 and 17 should be included in a common sub-heading, as they are argued as a separate group.

Brian P. Whipple
/B. P. W./
Examiner, Art Unit 2452
10/23/08